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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

The PEOPLE ex rel.
DEPARTMENT OF
TRANSPORTATION,

Plaintiff and Respondent,

v.

ASHKAN KARIMI,

Defendant and Appellant.

B275725 and B277686

(Los Angeles County
Super. Ct. No. BC456868)

APPEALS from a judgment and postjudgment order of the Superior Court of Los Angeles County, Teresa Sanchez-Gordon, Judge. Affirmed.

Ashkan Karimi, in pro. per., for Defendant and Appellant.

Jeanne E. Scherer, Chief Counsel, Jerald M. Montoya, Deputy Chief Counsel, and Nancy Naylor for Plaintiff and Respondent.

Ashkan Karimi, representing himself as he had in the trial court, appeals from the judgment entered in this eminent domain action after the jury found Karimi was entitled to \$14,020 in compensation for the property taken and \$37,000 in damages to the value of his remaining property (also known as “severance damages”). Karimi contends he was denied his constitutional rights to a fair trial and just compensation due to numerous procedural and evidentiary errors committed by the trial court. Karimi also argues the amount of compensation awarded by the jury was inadequate and not supported by substantial evidence. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

1. The Property and the Commencement of Eminent Domain Proceedings

In 2005 Karimi purchased a 19.274-acre parcel of vacant desert land in Llano, California, intending to hold the property for future agricultural use. State Route 138 ran along the southern border of the property. Southwest of Karimi’s property, Avenue W ran parallel to Route 138, but near the southwestern corner of the property, the avenue curved north and ended at Route 138. There was no traffic light at the intersection of Route 138 and Avenue W, and a barrier prevented left turns from Route 138 onto the avenue.

On March 11, 2011 the People of the State of California, ex rel. Department of Transportation (Caltrans) filed an action in eminent domain to acquire 2.804 acres of Karimi’s property for the widening of Route 138. The parcel to be acquired consisted of the southern portion of Karimi’s property, including the entirety

of the boundary with Route 138. Caltrans took possession of the 2.804-acre parcel in late 2011 pursuant to court order and began construction.¹

Caltrans completed construction on Route 138 in 2013. In addition to widening the highway Caltrans constructed a culvert, or tunnel, under the road through which rainwater could flow from the south side of the road to the condemned property on the north side. A detention basin was constructed on the condemned property to hold any water that flowed through the culvert. Caltrans also moved the intersection of Avenue W and Route 138 1300 feet to the west (away from the condemned property) and closed the existing intersection of Avenue W and Route 138. Finally, power lines located along the southern border of the condemned property were removed.

2. Evidence at Trial

Despite extended settlement discussions the parties could not reach agreement on the amount of compensation Karimi should receive for the property condemned and the decrease, if any, to the value of his remaining property. A jury trial commenced on March 7, 2016. Karimi did not contest Caltrans's right to condemn his property. Thus, the only issue at trial was the fair market value of the condemned parcel and of the remaining property.

¹ Code of Civil Procedure section 1255.410 permits a condemning agency to take possession of the condemned property prior to trial when certain requirements are met.

a. *Karimi's evidence of fair market value*

Karimi testified he has been a licensed real estate broker since 2007 and obtained a trainee real estate appraisal license in October 2015. He stated he has been actively involved in the real estate market since 1988, during which time he has acted as a real estate broker or consultant for both individual and corporate clients. He frequently prepares broker's opinions and reports for his clients assessing the value of real property. Karimi explained the issue of valuation has been a fundamental question in every real property transaction in which he has been involved.

In conducting his valuation analysis Karimi employed the sales-comparison approach to real estate appraisal. Karimi identified 12 recently sold properties within 16 miles of his property that he believed had similar characteristics to his property, such as size, location and usability. Karimi testified regarding the characteristics of the comparable sales he selected and the adjustments he made to the sales prices to account for particular differences between each of those properties and his own. Based on the adjusted sales prices, Karimi concluded the fair market value of his property before the condemnation was \$27,000 per acre. Thus, Karimi's opinion of the value of the 2.804 acres taken by Caltrans was approximately \$76,000.

Karimi then testified regarding his valuation of the detriment to his remaining property caused by the taking. Rather than calculate the price per acre of his remaining 16.470-acre parcel and deducting that value from the \$27,000 per acre value of the pre-taking parcel, Karimi individually examined each characteristic he deemed affected by the condemnation and determined the percentage reduction in value resulting from loss of that characteristic. For example, to account for the loss of

frontage road access, Karimi compared sales of properties without frontage access to sales of properties with frontage access. Based on those comparisons, he determined the percentage decrease in value per acre to a property without frontage access. Karimi opined absence of frontage access corresponded to a 50 percent decrease in value, not being located at an intersection corresponded to a 50 percent decrease in value and proximity to a detention basin corresponded to a 48 percent decrease. In order to account for the loss of all three characteristics, Karimi started with the pre-taking value of the remaining property, which he testified was \$445,000 based on his valuation of \$27,000 per acre. He then reduced that amount by 50 percent due to loss of frontage, which he testified resulted in a value of \$226,000. Reducing that amount by 50 percent due to relocation of the intersection results in a value of \$113,000 and reducing that amount by another 48 percent results in a value of \$54,000. Karimi then added these three reduced values together to arrive at the total severance damages of \$393,000.

Karimi also presented evidence it would cost him approximately \$47,000 to restore the power lines to the locations they were prior to the condemnation so that he could have power on his property.

Karimi presented the testimony of Thomas Murphy, a civil engineer, who opined certain alterations made by Caltrans could cause additional drainage onto Karimi's remaining property. Specifically, Murphy testified Caltrans had constructed a service road on the north side of the condemned property (bordering the south side of Karimi's remaining property). The road had a six-12 inch berm, or ridge, on its edge, which would cause rainwater to pool against the berm and drain onto Karimi's property in a

concentrated form; in contrast, before the presence of the berm, water would flow onto Karimi's property in a more even sheet-flow pattern. Murphy opined the concentrated flow "is much more erosive and much more difficult to deal with because as it—as it drains into the Karimi property, there's many, many different areas that then will need to be accommodated once the Karimi property is developed." Murphy also testified that overflow from the detention basin built by Caltrans would cause two-and-a-half to three times as much water to flow onto the western boundary of Karimi's property.

b. Caltrans's evidence of fair market value

Caltrans presented the testimony of appraiser Joyce Riggs to establish the fair market value of the property both before and after the condemnation. Riggs testified she has been a real estate appraiser and consultant for 28 years. She holds a general real estate appraisal license and has been designated an MAI appraiser, which is the highest designation available from the Appraisal Institute, a national organization of real estate appraisers. Riggs also stated she holds a Senior Right of Way Designation from the International Right of Way Association, which is a membership organization for professionals involved in public projects. Riggs has completed appraisals of multiple properties in the area surrounding Karimi's property, including several properties along Route 138. She testified her specialty is appraising properties for eminent domain and she has taken classes in that field and regularly reviews recent case law regarding eminent domain.

Riggs testified that, in preparation for valuing the property, she inspected it three times, researched the permitted land use and zoning laws for the property and the surrounding area and

analyzed recent nearby land sales. Riggs stated the property currently was vacant land but was zoned for light agricultural use or single-family residence. Based on the market conditions in 2011 Riggs opined the highest and best use for Karimi's property prior to the condemnation was to hold it for future development.

Riggs also employed the sales-comparison approach to valuing the precondemnation property. She selected six comparable properties within 5.5 miles of Karimi's property for her analysis. Rather than making individual adjustments to the price of each sale based on each specific characteristic, as Karimi had done, Riggs conducted a qualitative analysis in which she examined the individual characteristics of each comparable property and classified each as inferior, similar or superior to the Karimi property. She then reviewed the range of sale prices for each category of sales and determined her opinion of the market value of Karimi's property as higher than the inferior sales but less than the superior sales. After conducting this analysis Riggs's opinion of value of Karimi's property prior to condemnation was \$5,000 per acre. Thus, in her opinion the fair market value of the 2.804 acres condemned by Caltrans was \$14,020.

When asked why she had not adjusted the price of each comparable based on each individual characteristic the way Karimi had done, Riggs responded, "I think it's next to impossible in an area in the desert like this because every property is so different, there's so many different factors, and the market data, there's not enough data to really be able to isolate down to one term. So I don't think it's possible."

In order to assess whether there were any severance damages, Riggs testified it was necessary to deduct the post-

condemnation value of the 16.470-acre remaining parcel from the precondemnation value of that portion of the property. Riggs first analyzed the remaining 16.470 acres “again as if it’s a new appraisal.” She determined the changes in the parcel due to the loss of the southern border did not materially change the property, stating, “The highway is now widened. It’s still an interior lot. The access is no different. The visibility is no different. You can still develop it with the same uses as you could have in the before condition. It’s just a little smaller and they’ve already been compensated for that in the part acquired.” Because the property was not significantly different in character after the taking, Riggs concluded the fair market value of the remaining parcel remained \$5,000 per acre. Therefore, in her opinion there were no severance damages.

Riggs also performed an alternative analysis considering the possibility of the property being developed rather than held as vacant. She testified she had been informed that, to bring electricity to the property in the pre-taking condition would have required the addition of two electrical poles; in the after condition, four poles would be required. Riggs understood the cost to install four poles would be approximately \$47,000; thus, the additional cost to install poles caused by the taking was approximately \$23,500.

Caltrans also presented the testimony of Kristina Cydzik, a civil engineer, who works as a consultant on drainage, water resources management and water resources planning. Cydzik testified she conducted a drainage study of the area surrounding Karimi’s property both before and after the taking. Her study involved analyzing the topography of the land and determining how water would flow on it. Cydzik concluded the changes

resulting from Caltrans's construction would have no negative impact on Karimi's remaining property. She did not see any evidence of water pooling behind the berm on the service road. Similarly, the detention basin would not cause damage or erosion to Karimi's remaining property. According to Cydzik, once the water in the basin reached 1.3 feet, it would flow out to the west of Karimi's remaining property. She estimated water would pool in the basin for approximately 1.8 to 2.2 days before flowing out.

3. *The Jury Verdict and Judgment*

On March 16, 2016, after six days of trial, the jury reached a verdict in less than two hours of deliberation. The jury found the fair market value of the condemned portion of Karimi's property to be \$14,020 and found the amount of severance damages to be \$37,000. On April 22, 2016 judgment was entered in Karimi's favor in the amount of \$51,020, plus statutory interest.

Karimi filed a timely notice of appeal from the judgment (case No. B275725) and a separate timely appeal from the postjudgment order denying Karimi's motion for costs and litigation expenses (case No. B277686).²

² The notice of appeal in case No. B277686 also purports to appeal from the trial court's denials of Karimi's motion for a new trial and his motion for reconsideration of the denial of costs and expenses. However, Karimi's opening brief fails to address those orders in any substantive way. As such, the challenges to those orders are forfeited. (See *Benach v. County of Los Angeles* (2007) 149 Cal.App.4th 836, 852 [appellant forfeits issue not raised or supported by substantive argument].)

DISCUSSION

1. *Governing Law*

When private property is taken for public use, the owner is entitled to “just compensation, ascertained by a jury.” (Cal. Const., art. I, § 19; see Code Civ. Proc., § 1263.010, subd. (a).)³ The just compensation clause “is primarily aimed at making a landowner whole for any governmental taking or damage to his or her property.” (*Los Angeles County Metropolitan Transportation Authority v. Continental Development Corp.* (1997) 16 Cal.4th 694, 715.) However, “the Constitution does not ‘contemplate[] that a person, whose land is taken in the exercise of the right of eminent domain, shall be entitled to anything beyond a “just compensation.” He is to be paid the damage he actually suffers, and nothing more.” “After all, ‘[t]o award him less would be unjust to him; to award him more would be unjust to the public.” (*Escondido Union School Dist. v. Casa Sueños De Oro, Inc.* (2005) 129 Cal.App.4th 944, 959 (*Escondido Union*).)

“The Legislature has defined the measure of just compensation as ‘the fair market value of the property taken.’ (Code Civ. Proc., § 1263.310.)” (*Metropolitan Water Dist. of So. California v. Campus Crusade for Christ, Inc.* (2007) 41 Cal.4th 954, 965 (*Campus Crusade*).) “The fair market value of the property taken is the highest price on the date of valuation that would be agreed to by a seller, being willing to sell but under no particular or urgent necessity for so doing, nor obliged to sell, and a buyer, being ready, willing, and able to buy but under no particular necessity for so doing, each dealing with the other with

³ Statutory references are to the Code of Civil Procedure unless otherwise stated.

full knowledge of all the uses and purposes for which the property is reasonably adaptable and available.” (§ 1263.320, subd. (a).)

“As section 1263.320 indicates, the fair market value of property taken has not been limited to the value of the property as used at the time of the taking, but has long taken into account the “highest and most profitable use to which the property might be put in the reasonably near future, to the extent that the probability of such a prospective use affects the market value.”” (*Campus Crusade, supra*, 41 Cal.4th at p. 965.) In other words, “[t]o ascertain the fair market value of a property being condemned in an eminent domain proceeding, there must be a determination of the highest and best use to which the property being condemned can be put” (*City of San Diego v. D.R. Horton San Diego Holding Co., Inc.* (2005) 126 Cal.App.4th 668, 680 (*D.R. Horton*).) “Once the highest and best use of the property is determined, one of several approaches to valuation must be selected. Evidence Code sections 815-820 set forth various methodologies sanctioned for use by valuation experts, including considering sales contracts of comparable properties (Evid. Code, § 816)” (*Ibid.*)

When, as here, the property taken is part of a larger parcel, “the owner is compensated not merely for the injury to the part taken but also for the injury, if any, to the remainder. (§ 1263.410, subd. (a).)” (*Campus Crusade, supra*, 41 Cal.4th at p. 965.) Compensation for injury to the remainder, commonly called “severance damages,” is the amount of the damage to the remainder caused by the taking, reduced by the amount of the benefit, if any, to the remainder caused by the taking. (See § 1263.410, subd. (b).) Severance damages may be based on a detrimental change to such characteristics as “view, access to

beach property, freedom from noise, etc. . . .’ [Citation.]
Severance damages are not limited to special and direct damages, but can be based on any factor, resulting from the project, that causes a decline in the fair market value of the property.”
(*Los Angeles County Metropolitan Transportation Authority v. Continental Development Corp.*, *supra*, 16 Cal.4th at p. 712.)
However, “[n]ot every diminution in value that flows from a partial taking results in severance damages. ‘Merely rendering private property less desirable for certain purposes, or even causing personal annoyance or discomfort in its use, will not constitute the damage contemplated by the [C]onstitution.’”
(*San Diego Metropolitan Transit Development Bd. v. Cushman* (1997) 53 Cal.App.4th 918, 926, fn. 2 (*Cushman*).) In addition, severance damages may not be based on factors that are “conjectural, speculative, or remote.” (*Campus Crusade*, at p. 972.)

“The procedures governing eminent domain actions differ in some respects from those governing other actions. For example, . . . ‘[e]xcept as otherwise provided by statute, neither the plaintiff nor the defendant has the burden of proof on the issue of compensation.’ (§ 1260.210, subd. (b).)” (*Campus Crusade*, *supra*, 41 Cal.4th at pp. 965-966.) Instead, “[t]he trier of fact generally is presented with conflicting opinions of value and supporting data and is required to fix value based on the weight it gives to the opinions and supporting data.” (*People ex rel Dept. of Transportation v. Salami* (1991) 2 Cal.App.4th 37, 42.)

2. *The Challenged Evidentiary Rulings Were Within the Trial Court's Broad Discretion*

a. *Standard of review*

Karimi challenges three evidentiary rulings by the trial court. A trial court's ruling on the admissibility of evidence in an eminent domain proceeding, as in any other proceeding, is reviewed for abuse of discretion. “““In condemnation proceedings, the trial court is vested with considerable judicial discretion in admitting or rejecting evidence of value.””” (*People ex rel. Dept. of Transportation v. Clauser/Wells Partnership* (2002) 95 Cal.App.4th 1066, 1073; accord, *Sacramento Area Flood Control Agency v. Dhaliwal* (2015) 236 Cal.App.4th 1315, 1327-1328 [applying abuse of discretion standard to evidentiary ruling regarding evidence of property value in condemnation action]; *Escondido Union, supra*, 129 Cal.App.4th at p. 983 [same].)

b. *The trial court did not err in admitting Caltrans's demonstrative exhibit*

During Cydzik's testimony, Caltrans introduced an exhibit consisting of a land survey map relied on by Cydzik in forming her opinions of the water drainage on Karimi's property. The map was received into evidence without objection. Caltrans then introduced a three dimensional model of the detention basin, which Cydzik stated had been recently created by individuals in her office based on data contained in the land survey map. Karimi objected to the model's admission because it had not been produced in discovery. Caltrans's counsel stated she had disclosed the model to Karimi and emailed him photographs of it. Karimi acknowledged he received the email but stated it was sent on the evening of the Friday before trial began, which had not

given him an adequate opportunity to inspect the model. When Karimi informed the trial court he had not had an opportunity to inspect the model, the court replied, “Well, I would recommend that you do that” and overruled the objection.⁴ The model was admitted into evidence.

On appeal Karimi argues the admission of the three dimensional model deprived him of his right to a fair trial because he was unable to properly inspect the model prior to cross-examining Caltrans’s expert. Further, Karimi argues, his expert had already testified when the model was introduced and, therefore, the expert had been unable to opine on the model’s accuracy and usefulness.⁵

⁴ At several points the trial court appears not to have recognized its ability to give neutral guidance to Karimi, a self-represented litigant, about the procedural rules for trying a case. The court’s apparent emphasis on disposing of the matter quickly and its unwillingness to take reasonable steps to enable Karimi to familiarize himself with procedural technicalities are troubling. (See *Holloway v. Quetel* (2015) 242 Cal.App.4th 1425, 1434 [“The obligation of a judge to dispose of matters promptly and efficiently must not take precedence over the judge’s obligation to dispose of the matters fairly and with patience. For example, when a litigant is self-represented, a judge has the discretion to take reasonable steps, appropriate under the circumstances and consistent with the law and the canons, to enable the litigant to be heard”].) Nonetheless, while the trial court certainly could have exhibited more generosity with its time and patience, the failures to do so in this case did not constitute an abuse of discretion.

⁵ Karimi argues for the first time on appeal the model was inaccurate and would mislead the jury. These arguments were forfeited because not raised in the trial court. (See *People v. Clark* (2016) 63 Cal.4th 522, 603 [failure to make timely and

“Trial courts have broad discretion to admit demonstrative evidence such as maps, charts, and diagrams to illustrate a witness’s testimony.” (*People v. Mills* (2010) 48 Cal.4th 158, 207.) Nonetheless, parties have a right to expect all evidence will be produced before trial to protect them from having to respond to surprise evidence. (See *R & B Auto Center, Inc. v. Farmers Group, Inc.* (2006) 140 Cal.App.4th 327, 356 [“[o]ne of the principal purposes of civil discovery is to do away with ‘the sporting theory of litigation—namely, surprise at the trial’”].)

The trial court’s admission of the model did not constitute an abuse of discretion. Karimi acknowledges he received notice of the model’s existence on Friday, March 4, 2016. While trial began only three days later, on Monday, March 7, Cydzik did not testify until March 14. Thus, Karimi had 10 days to request access to the model and review it prior to its introduction at trial. In addition, although the model was introduced during Cydzik’s testimony on March 14, Karimi did not begin his cross-examination of Cydzik until the next day. At the very least Karimi had the night of March 14 to examine the exhibit. Further, Karimi never requested a continuance so that he could examine the model or have his expert examine it. Karimi has offered no explanation why he was unable to adequately examine the model prior to, or during, trial. Under these circumstances we find Karimi had adequate time to arrange inspection of the model, and the trial court did not abuse its discretion in admitting it.

specific objection forfeits claim of evidentiary error on appeal]; Evid. Code, § 353 [same]; see also *Sea & Sage Audubon Society, Inc. v. Planning Com.* (1983) 34 Cal.3d 412, 417 [issues not raised in trial court cannot be raised for first time on appeal].)

- c. *The trial court did not err in admitting testimony regarding comparable sales relied on by Caltrans's expert*

Karimi contends Riggs relied on inadmissible evidence in determining the value of the property and the trial court improperly overruled his objections to that testimony. During her explanation of her methodology, Riggs described each of the comparable sales she considered. Riggs testified that, in examining comparable sales, she routinely attempts to contact the buyer, seller or broker to verify the accuracy of the publicly available information and to ensure the sale was an arms-length transaction. When she is unable to reach a party to the transaction, she may contact the county assessor's office as a means of verifying the sale. She explained the assessor may not accept a sales price as the assessed value of a property if the price falls outside the general range of sales in the area and, if that is the case, she may determine the sale is not an appropriate arms-length comparable.

In this case Riggs was unable to verify one of her comparable sales with anyone involved directly in the transaction, so she contacted the county assessor. She learned the assessor had accepted a 2008 sale of the property for a price of \$145,000. However, the subsequent sale of the property four months later for \$297,500 was rejected by the assessor's office as a non-arm's-length transaction. Riggs used the first sale as a comparable in her appraisal of Karimi's property; but based on the information she received from the assessor's office, the timing of the second sale and the drastic increase in price in the second sale, among other reasons, Riggs concluded the second sale was

not an arm's-length transaction and did not use it as a comparable.

Karimi objected to Riggs's testimony concerning the assessor's valuation of the property, arguing such testimony was prohibited by Evidence Code section 822, which provides, "In an eminent domain or inverse condemnation proceeding . . . the following matter is inadmissible as evidence and shall not be taken into account as a basis for an opinion as to the value of the property: [¶] . . . [¶] (3) The value of any property or property interest as assessed for taxation purposes" (Evid. Code, § 822, subd. (a).)

Contrary to Karimi's contention this portion of Riggs's testimony was not admitted to establish the value of the comparable sale or Karimi's property. It was admitted to explain how and why Riggs chose to rely on one sale as part of her analysis but rejected a subsequent sale. Allowing an expert witness to explain her methodology of valuation, even if the evidence relied on would not itself be admissible to prove value, was within the trial court's discretion. (See *County of Glenn v. Foley* (2012) 212 Cal.App.4th 393, 400 [appraiser could testify regarding evidence barred by Evidence Code section 822 when evidence was presented not to establish value but to explain appraiser's methodology].) Furthermore, when an expert's valuation opinion is based on "considerations which are proper as well as those which are not, the testimony may be admitted and the trier of fact shall determine its weight and credibility." (*Ventura County Flood Control Dist. v. Security First Nat. Bank* (1971) 15 Cal.App.3d 996, 1004; see also *City of Stockton v. Albert Brocchini Farms, Inc.* (2001) 92 Cal.App.4th 193, 198 ["when a valuation expert employs an unsanctioned methodology, the

opinion may be excluded in part or in whole in the discretion of the trial court”]; *City of Gilroy v. Filice* (1963) 221 Cal.App.2d 259, 271 [“Where the valuation testimony embraces proper as well as improper considerations, a motion to strike may properly be denied and the matter left to the court or jury to determine the weight to be given the testimony. The question is addressed to the discretion of the trial court”].) The court was within its discretion to allow the testimony, and Karimi had the opportunity to cross-examine Riggs regarding the weight her testimony should be given in light of her consideration of the assessed value of a comparable sale.

Karimi also argues the trial court erred by allowing Riggs to testify regarding another comparable sale in which the seller was a court-appointed receiver. Karimi contends that a court-appointed receiver is obligated to sell a property and therefore the sale cannot be a proper indicator of fair market value. (See § 1263.320, subd. (a) [defining fair market value as involving a seller “being willing to sell but under no particular or urgent necessity for so doing, nor obliged to sell”].) Even if this argument were not forfeited because not raised in the trial court (see, e.g., *Kaufman & Broad Communities, Inc. v. Performance Plastering, Inc.* (2006) 136 Cal.App.4th 212, 226), it is without merit. The fact a sale was conducted by a court-appointed receiver does not necessarily mean the receiver was under pressure to sell the property or that the sale was not an indicator of fair market value. To the extent Karimi believed the sale was an unreliable or misleading comparable, he could, and did, cross-examine Riggs on that issue. (See *San Diego Gas & Electric Co. v. 3250 Corp.* (1988) 205 Cal.App.3d 1075, 1083 [“Owners assert the sale is inadmissible as an involuntary or forced sale for no

other reason than because it was accomplished in a bankruptcy sale. The assertion goes to the weight of the evidence, not its admissibility, and is without merit”].)

d. *The trial court did not prevent Karimi from testifying regarding his opinion of value*

Karimi argues the trial court erred by sustaining various objections to his testimony and by excluding an exhibit he compiled containing property sales volume and unemployment data. These rulings, Karimi states, prevented him from adequately testifying regarding his opinion of the value of his property. We have reviewed the trial court’s rulings and find no clear error or abuse of discretion. Data collected by third parties, even if compiled into a demonstrative exhibit by Karimi, were properly excluded as hearsay evidence absent any foundation. Further, Karimi testified at length regarding his valuation methodologies and conclusions, and he has not explained how the exclusion of particular testimony prejudiced his case.

3. *Karimi Has Forfeited His Contention of Error Based on Witnesses’ Failures To Appear for Trial*

Karimi contends he was prejudiced by the failure of two witnesses to appear at trial. The first witness, Ronald Boosalis, is employed by Southern California Edison and was designated by Caltrans to testify regarding the relocation of electrical poles after the condemnation. On March 9, 2016, the third day of trial, Caltrans informed the court it no longer intended to call Boosalis to testify.⁶ Karimi stated he was surprised and would subpoena

⁶ To the extent Karimi argues the court erred by allowing Caltrans to remove Ronald Boosalis from its witness list, the contention is without merit. The pretrial exchange of witness

Boosalis. Karimi successfully had a subpoena served on Boosalis and confirmed he would appear to testify on March 15, 2016. However, Boosalis failed to appear on March 15. When Karimi requested permission to telephone Boosalis and determine his whereabouts, the court instructed him, “Call him outside. If he’s there, fine. If he’s not, we’re moving forward.” After informing the court he could not find Boosalis, Karimi stated he would rest his case. He did not object to continuing without Boosalis’s testimony, did not request a continuance and did not make any argument as to why his case would be prejudiced without the testimony.

Similarly, Karimi argues he was prejudiced by the failure to appear of his appraisal expert, Jeffrey Wolpin. Karimi had a subpoena served on Wolpin on March 1, 2016, ordering him to appear at trial on March 14. On March 14, 2016 Karimi informed the court he could not locate Wolpin and stated he would rest his case after one additional witness (not Wolpin). He did not request additional time to contact Wolpin, nor did he indicate he could not properly present his case without Wolpin. Later the same day, when asked if he was withdrawing Wolpin from the witness list, Karimi said he would have to contact

lists puts each party on notice of witnesses that may be called at trial. Inclusion on the witness list does not compel the identifying party to call the witness to testify. (See *County of Los Angeles v. Superior Court* (1990) 222 Cal.App.3d 647, 656 [party may “for tactical reasons and in its *own* interest, [choose] not to call one of its witnesses. Under these circumstances, there simply is no requirement that a party call a particular witness”]; see also (*Shooker v. Superior Court* (2003) 111 Cal.App.4th 923, 928 “[t]he act of designating any expert trial witness (party or nonparty) is conditional, not absolute”].)

Wolpin and find out why he had not appeared. The trial court responded by stating, “Here’s the issue. Tomorrow is the fifth day; okay? We told [the jury] five days of testimony.” Again, Karimi did not request additional time or object that Wolpin’s testimony was crucial to his case. He responded, “So in the interest of time, I would—because I ran out, I guess, too late this morning. So if there’s no more time, I would rest my case there.”

On appeal Karimi argues the failure of Boosalis and Wolpin to appear was prejudicial and the court erred by not issuing bench warrants to enforce the subpoenas. We are sympathetic to Karimi’s protestation he was unaware of how to enforce a subpoena, and the court could have provided neutral guidance and information. Whenever possible, we do not strictly apply technical rules of procedure in a manner that deprives self-represented litigants of a hearing, but the fact remains Karimi took no steps to inform the trial court he could not proceed without these witnesses. Because Karimi did not object to proceeding with trial in the absence of these witnesses and did not request a continuance to locate them, any claim of error has been forfeited. (See *Kaufman & Broad Communities, Inc. v. Performance Plastering, Inc.*, *supra*, 136 Cal.App.4th at p. 226 [issues not raised in the trial court cannot be raised for the first time on appeal]; *Perez v. Grajales* (2008) 169 Cal.App.4th 580, 591-592 [“[a]ppellate courts are loath to reverse a judgment on grounds that the opposing party did not have an opportunity to argue and the trial court did not have an opportunity to consider”].)

4. *The Trial Court Did Not Err by Refusing Karimi's Proposed Jury Instruction and Overruling His Objections to the Verdict Form and Judgment*

a. *Karimi's proposed jury instruction was improperly argumentative*

Prior to trial Karimi requested the court instruct the jury with the following special instruction: “You may be concerned that compensating the Defendant will result in losses to the operating budget of the Department of Transportation. This is not the case. You should not[,] in determining just compensation in this matter[,] be influenced by any such concerns that compensating the Defendant may result in any changes in public services.” The court refused to give the instruction. Karimi argues the instruction was necessary to ensure the jury did not consider its own self-interest in determining the damage award.

“A party is entitled upon request to correct, nonargumentative instructions on every theory of the case advanced by him [or her] which is supported by substantial evidence.” (*Soule v. General Motors Corp.* (1994) 8 Cal.4th 548, 572 (*Soule*); *Bullock v. Philip Morris USA, Inc.* (2008) 159 Cal.App.4th 655, 684 (*Bullock*).) A court may refuse a proposed instruction that incorrectly states the law or is argumentative, misleading or incomplete. (*Shaw v. Pacific Greyhound Lines* (1958) 50 Cal.2d 153, 158; see *Harris v. Oaks Shopping Center* (1999) 70 Cal.App.4th 206, 209 [“[i]rrelevant, confusing, incomplete or misleading instructions need not be given”].) “Instructions should state rules of law in general terms and should not be calculated to amount to an argument to the jury in the guise of a statement of law. [Citations.] Moreover, it is error to give, and proper to refuse, instructions that unduly

overemphasize issues, theories or defenses either by repetition or singling them out or making them unduly prominent although the instruction may be a legal proposition.” (*Powerhouse Motorsports Group, Inc. v. Yamaha Motor Corp., U.S.A.* (2013) 221 Cal.App.4th 867, 881.) A court may refuse an instruction requested by a party when the legal point is adequately covered by other instructions given. (*Arato v. Avedon* (1993) 5 Cal.4th 1172, 1189, fn. 11.)

When the contention on appeal is that the trial court failed to give a requested jury instruction, we review the record in the light most favorable to the party proposing the instruction to determine whether there was substantial evidence warranting the instruction. (*Soule, supra*, 8 Cal.4th at p. 572; *Bullock, supra*, 159 Cal.App.4th at p. 685.) If so, reversal is required only when “it seems probable” the refusal to give the proposed instruction “prejudicially affected the verdict.” (*Soule*, at p. 580; accord, *Bullock*, at p. 685; *Viner v. Sweet* (2004) 117 Cal.App.4th 1218, 1225-1226.)

Karimi’s proposed instruction was properly refused by the trial court as argumentative. The instruction did not articulate any principle of law; rather, it improperly drew the jury’s attention to its own self-interest and the potential consequences of a damage award on Caltrans. In fact, use of Karimi’s instruction could easily have had the opposite of his intended effect by reminding the jury Caltrans would be paying any damages from public funds. Such an instruction would have been improper. (Cf. *People v. Loop* (1954) 127 Cal.App.2d 786, 805 [instruction stating, “it would be unjust to the public that the plaintiff, the People of the State of California, should be required to pay the defendants more than a fair compensation,” was

improper because “[s]uch instructions come too close to arousing the minds of jurors to their own interests as taxpayers and members of the public for whose ‘general good’ the property is being taken. Such instructions serve no good purpose”].)

Karimi contends the instruction was nonetheless necessary to ensure a fair trial because of a statement made by Caltrans’s counsel. During her opening statement Caltrans’s counsel stated, “As I mentioned, we do represent the People of the State of California, and with the People of the State of California, anything that comes from the State of California is paid from public funds.” Karimi’s objection to the statement was overruled. Karimi argues Caltrans’s counsel’s statement improperly implied “any award to the condemnee will negatively impact public funds and services” and his proposed instruction was necessary to rectify the impropriety. The remark by Caltrans’s counsel, although improper, did not warrant giving the additional instruction requested by Karimi. The jury was properly instructed on how to calculate the fair market value of Karimi’s property, including any severance damages. The jury was also instructed that arguments made by counsel are not evidence. Under these circumstances and considering the wide latitude given to counsel during opening statements and closing argument (see *Cassim v. Allstate Ins. Co.* (2004) 33 Cal.4th 780, 795), the single statement made by Caltrans’s counsel did not necessitate Karimi’s proposed instruction. (Cf. *Sacramento Area Flood Control Agency v. Dhaliwal*, *supra*, 236 Cal.App.4th at pp. 1338-1339 [counsel’s statement, “I think it’s obvious in this case that [plaintiff] can’t afford to pay more than the fair market value of the property,” was not improper].)

b. *Refusal to adopt Karimi's proposed special verdict form was within the trial court's discretion*

In July 2015 the parties filed a joint special verdict form containing separate line items for each type of severance damage Karimi claimed, such as loss of highway frontage, loss of intersection and alterations to the drainage system. Immediately prior to trial in March 2016 Caltrans withdrew its support for the joint verdict form and proposed a form with only one line item for severance damages, which asked, “What was the amount of severance damages to the remainder of defendant’s Property on January 6, 2011?” Karimi objected to Caltrans’s proposed form, and argued it was misleading to the jury because, by declining to require the jury to identify each subcategory of severance damages, the court was effectively instructing the jury “to ignore the specifics of each type of severance damages.” The court overruled Karimi’s objection and used the verdict form submitted by Caltrans.

We find nothing improper in the verdict form used by the court. The amount of detail to be included in a special verdict form is within the trial court’s discretion. (See *Wolf v. Walt Disney Pictures & Television* (2008) 162 Cal.App.4th 1107, 1119; *Valentine v. Baxter Healthcare Corp.* (1999) 68 Cal.App.4th 1467, 1488.) Here, the court properly instructed the jury how to calculate severance damages pursuant to section 1263.410 and CACI No. 3511A.⁷ In addition, Karimi had ample opportunity to

⁷ The court instructed the jury with a modified version of CACI No. 3511A: “Severance damages are the damages to Ashkan Karimi’s remaining property caused by the taking, or by the construction and use of the People of the State of California, acting by and through the Department of Transportation’s

describe the types of severance damages he claimed both during his testimony and in his closing argument. The jury was entirely capable of finding separate types of severance damages and recording only the sum on the verdict form. There is nothing in the record to suggest the jury was discouraged from or incapable of doing so. Declining to use Karimi's proposed verdict form was well within the discretion of the trial court. (See *Hjelm v. Prometheus Real Estate Group, Inc.* (2016) 3 Cal.App.5th 1155, 1179 [failure to use defendant's proposed verdict form separating damages into categories was not abuse of discretion].)

c. *Karimi's objections to the judgment are without merit*

Following trial Caltrans submitted a three-page proposed judgment, which, in addition to reciting the damages awarded by the jury and the statutory interest rate, stated the payment of damages "shall be in full payment for all of this defendant's claims of just compensation arising out of the condemnation of [the property], including . . . all damages of every kind and nature suffered or to be suffered by reason of plaintiff's

proposed project, or both. [¶] Severance damages are determined as follows: [¶] 1. Determine the fair market value of the remaining property on date of valuation by subtracting the fair market value of the part taken from the fair market value of the entire property; [¶] 2. Determine the fair market value of the remaining property after the People of the State of California, acting by and through the Department of Transportation's proposed project is completed; and [¶] 3. Subtract the fair market value of the remaining property after the People of the State of California, acting by and through the Department of Transportation's proposed project is completed from the fair market value of the remaining property on date of valuation."

acquisition of [the property].” The proposed judgment further stated that, upon payment of the awarded damages and statutory interest, “all interests of defendant Ashkan Karimi in and to this parcel shall be terminated.” Karimi filed written objections to the proposed judgment on April 1, 2016 to which Caltrans filed a response on April 5, 2016. On April 22, 2016, without addressing Karimi’s objections, the trial court signed the judgment as proposed by Caltrans.

On appeal Karimi argues the court erred by failing to hold a hearing on his objections to the judgment. He further contends the judgment is unjust because it “attempts to encompass ‘future damages’” and terminates his rights to driveways across the condemned parcel. Karimi fails to provide any legal authority to support these arguments. (Cf. *Kaufman v. Goldman* (2011) 195 Cal.App.4th 734, 743 [appellate court may treat as forfeited any argument not “supported by both coherent argument and pertinent legal authority”]; *Badie v. Bank of America* (1998) 67 Cal.App.4th 779, 784–785 “[w]hen an appellant fails to raise a point, or asserts it but fails to support it with reasoned argument and citation to authority, we treat the point as waived”.) In any event, the trial court was not required to hold a hearing on Karimi’s objections; and Karimi has not met his burden of demonstrating the court’s failure to expressly rule on his objections was prejudicial, that is, that a different result would have been probable. (See § 475 [no judgment shall be reversed absent showing error was prejudicial]; *Carolina Casualty Ins. Co. v. L.M. Ross Law Group, LLP* (2012) 212 Cal.App.4th 1181, 1196–1197 [prejudice will not be presumed; burden rests with party claiming error to demonstrate not only error, but also resulting miscarriage of justice].)

Karimi's substantive arguments regarding the judgment fail as well. Karimi had ample opportunity to present evidence of his damages, both present and future, to the jury, including his lack of access to the condemned portion of the property. The judgment properly encompasses all damages caused by the condemnation. (See *Ellena v. State of California* (1977) 69 Cal.App.3d 245, 254 [“[a] condemnation award must once and for all fix the damages that will reasonably occur by reason of the construction of the public improvements in the manner proposed”].)

5. *Substantial Evidence Supported the Damage Award*

Karimi contends the jury's award of \$51,020 was insufficient to justly compensate him for the fair market value of the condemned property and severance damages. We review challenges to the jury's valuation for substantial evidence. (*Central Valley Gas Storage, LLC v. Southam* (2017) 11 Cal.App.5th 686, 692 [“the trier of fact's valuation findings will be upheld when they are supported by substantial evidence”].) To determine whether a damages award is supported by substantial evidence, we “must start with the presumption that the record contains evidence sufficient to support the judgment; it is appellant's burden to demonstrate otherwise.” (*Baxter Healthcare Corp. v. Denton* (2004) 120 Cal.App.4th 333, 368; accord, *Pannu v. Land Rover North America, Inc.* (2011) 191 Cal.App.4th 1298, 1322, fn. 18.) “Under that standard, we must consider all of the evidence in the light most favorable to the prevailing party, giving it the benefit of every reasonable inference, and resolving conflicts in support of the judgment.” [Citation.] ‘It is not our task to weigh conflicts and disputes in the evidence; that is the province of the trier of

fact. Our authority begins and ends with a determination as to whether, on the entire record, there is *any* substantial evidence, contradicted or uncontradicted, in support of the judgment.” (*Pannu*, at p. 1322, fn. 18; accord, *Howard v. Owens Corning* (1999) 72 Cal.App.4th 621, 630.)

Karimi contends the evidence at trial demonstrated the jury award was inadequate. In support of this claim Karimi highlights discrepancies between his opinion of value of the condemned property and severance damages and the opinions of Caltrans’s experts. Karimi’s fundamental misapprehension is his apparent assumption the jury was obligated to believe his valuation; Karimi is entitled to disagree with the jury’s verdict, but he is not entitled to attack it based solely on that disagreement. Karimi had ample opportunity to present his side of the story to the jury. Likewise, Caltrans’s experts testified in detail regarding their valuation methodologies and conclusions. “The jury had the power to give whatever weight it chose to the evidence in making its final determination. ‘The trier of fact may accept the evidence [of value] of any one expert or choose a [damage] figure between them based on all of the evidence.’” (*Cushman, supra*, 53 Cal.App.4th at p. 931; accord, *D.R. Horton, supra*, 126 Cal.App.4th at p. 681.) Here, the jury adopted Riggs’s valuation of the condemned property and awarded severance damages less than Karimi requested but more than the valuation of Caltrans’s experts. Because sufficient evidence supports the jury’s determination, it will not be disturbed on appeal.

6. *The Trial Court Properly Denied Karimi's Motion for Litigation Expenses and Refused To Award Costs*

a. *Postjudgment proceedings*

On May 6, 2016 Caltrans served Karimi, by personal service, with a notice of entry of judgment and a copy of the signed judgment that had been previously entered. The notice of entry and proof of service were filed in the trial court on May 6, 2016. On June 3, 2016 Karimi filed a motion for litigation expenses and a memorandum of costs, seeking an award of more than \$23,000. Caltrans filed an opposition to the motion for litigation expenses and a motion to tax costs. Following a hearing on July 19, 2016, the court denied Karimi's motion for litigation expenses. The court did not separately address Karimi's memorandum of costs or Caltrans's motion to tax but denied Karimi any recovery.⁸

⁸ On July 28, 2016 Karimi filed an amended motion for a new trial and a motion for reconsideration of the motion for litigation expenses and memorandum of costs. On August 22, 2016, after hearing argument from the parties, the trial court denied the motion for a new trial and refused to address the motion for reconsideration on procedural grounds. Regarding the motion for a new trial, the court's minute order stated, "Defendant states that no Notice of Entry of Judgment was given, which plaintiff does not dispute." The trial court's statement is not supported by the record on appeal, which reveals Caltrans has consistently maintained Karimi was personally served with the notice of entry of judgment on May 6, 2016. In addition, the July 19, 2016 minute order reflecting the court's denial of Karimi's motion for litigation expenses contains the opposite finding, stating, "Notice was personally served on defendant on May 6, 2016."

b. *Karimi's memorandum of costs was untimely*

A defendant in an eminent domain proceeding is entitled to recover his or her ordinary costs incurred during the litigation. (§ 1268.710 [“defendants shall be allowed their costs”]; *County of Los Angeles v. Ortiz* (1971) 6 Cal.3d 141, 144 [stating “costs” in prior version of statute “has been held in an unbroken line of cases to refer only to ordinary costs of suit, such as sheriff’s and jury fees, and not to the fees of experts or attorneys”].) A party seeking to recover costs must serve and file a memorandum of costs within 15 days after the date of service of the notice of entry of judgment. (Cal. Rules of Court, rule 3.1700(a)(1).) The time limit for filing a memorandum of costs is mandatory; failure to timely file and serve a cost bill waives the party’s entitlement to costs. (*Hydratec, Inc. v. Sun Valley 260 Orchard & Vineyard Co.* (1990) 223 Cal.App.3d 924, 929 [“[t]he time provisions relating to the filing of a memorandum of costs, while not jurisdictional, are mandatory”].)

Caltrans personally served a notice of entry of judgment on May 6, 2016. Thus, Karimi had only until May 23, 2016 to file his memorandum of costs. Karimi did not file his combined motion for litigation expenses and memorandum of costs until June 3, 2016. The memorandum was untimely, and the trial court properly declined to award costs to Karimi.

Karimi attempts to justify his late filing of the memorandum of costs by contending the notice of entry of judgment served on him was defective. Specifically, Karimi notes the copy of the judgment attached as an exhibit to the notice of entry “was not a true and correct copy of the judgment because it

referred to the wrong case number . . . and the document was not signed by the judge.”⁹

Karimi’s argument is misplaced. There is simply no requirement that a written notice of entry of judgment attach the judgment as entered by the court. (Cf. Cal. Rules of Court, rule 8.104(a)(1)(B) [notice of appeal must be filed 60 days after the party filing the notice of appeal “is served by a party with a document entitled ‘Notice of Entry’ of judgment *or* a file-endorsed copy of the judgment, accompanied by proof of service”; italics added].) Nor has Karimi cited any authority to support his contention the notice of entry of judgment in this case failed to trigger the 15-day filing deadline for a memorandum of costs because of the minor defects in the form of the judgment attached to that notice. To the contrary, because Karimi does not argue he lacked actual notice of the entry of the judgment as of May 6, 2016, any irregularities in the form of the notice are immaterial. (See *In re Marriage of Eben-King* (2000) 80 Cal.App.4th 92, 114 [technical defect in notice of entry does not render notice ineffective “unless the defect was arguably so egregious as effectively to preclude any *actual notice* of entry of judgment”].)

⁹ The notice of entry of judgment filed by Caltrans on May 6, 2016 attached a copy of the judgment identical to that filed by the court on April 22, 2016. The judgment was signed by the court although the case number in the caption was missing a digit (it read BC45868 rather than BC456868). The incorrect case number was crossed out by hand, and the correct case number entered. The copy of the judgment Karimi states he received is a conformed copy, not a copy of the original judgment. The conformed copy does not have a corrected case number and is stamped with the judge’s name rather than signed.

c. Karimi's motion for litigation expenses was properly denied

In addition to being entitled to recover costs, the defendant in an eminent domain proceeding may recover litigation expenses if the plaintiff's pretrial offer of compensation was unreasonable and the defendant's pretrial demand was reasonable.

Section 1250.410, subdivision (b), states, "If the court, on motion of the defendant made within 30 days after entry of judgment, finds that the offer of the plaintiff was unreasonable and that the demand of the defendant was reasonable viewed in the light of the evidence admitted and the compensation awarded in the proceeding, the costs allowed pursuant to Section 1268.710 shall include the defendant's litigation expenses."

The trial court found Karimi's motion was timely because it was filed within 30 days of the May 6, 2016 service of the notice of entry. This was error. Section 1250.410, subdivision (b), requires a motion for litigation expenses be made within 30 days after entry of judgment, not within 30 days after service of notice of entry. The judgment in this case was entered April 22, 2016. Karimi's June 3 motion was untimely and should have been denied on that ground.

DISPOSITION

The judgment and postjudgment order denying costs and litigation expenses are affirmed. The parties are to bear their own costs on appeal.

PERLUSS, P. J.

We concur:

ZELON, J.

SEGAL, J.